

Chapter 87.

Credit Life and Disability Insurance.

Sec.

23-87-101. Title.

23-87-102. Purpose.

23-87-103. Definitions.

23-87-104. Scope.

23-87-105. Construction.

23-87-106. Penalties.

23-87-107. Policy forms.

23-87-108. Amount.

23-87-109. Term.

23-87-110. Provisions of policies and certificates of insurance.

23-87-111. Delivery of policy or certificate.

23-87-112. Filing, approval, and withdrawal of policies, certificates, notices, etc.

23-87-113. Premiums and refunds.

23-87-114. Issuance of policies.

23-87-115. Claims.

23-87-116. Debtor's choice of insurer as additional security.

23-87-117. Compensation limited.

23-87-118. Enforcement.

23-87-119. Judicial review.

23-87-101. Title.

This chapter may be cited as the "Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance".

23-87-102. Purpose.

The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance.

23-87-103. Definitions.

For the purpose of this chapter, unless the context otherwise requires:

- (1) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;
- (2) "Credit life insurance" means insurance on the life of a debtor, pursuant to or in connection with a specific loan or other credit transaction for a period of time not to exceed ten (10) years;
- (3) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of such lender, vendor, or lessor;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction; and

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

23-87-104. Scope.

All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except insurance sold in connection with a loan or other credit transaction of more than ten (10) years' duration.

23-87-105. Construction.

(a) Nothing in this chapter is intended to prohibit or discourage reasonable competition.

(b) The provisions of this chapter shall be liberally construed.

23-87-106. Penalties.

(a) In addition to any penalty provided by law, any person who violates an order of the Insurance Commissioner after it has become final, and while the order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Arkansas a sum not to exceed two hundred fifty dollars (\$250) which may be recovered in a civil action. However, if violation is found to be willful, the amount of the penalty shall be a sum not to exceed one thousand dollars (\$1,000).

(b)(1) The commissioner, in his discretion, may also revoke or suspend the license or certificate of authority of the person guilty of any violation as set out in subsection (a) of this section.

(2) The order for suspension or revocation shall be subject to judicial review as provided in § 23-61-307.

23-87-107. Policy forms.

Credit life insurance and credit disability insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of disability insurance issued to debtors on a term plan, or disability provisions in individual life policies to provide coverage;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of disability insurance issued to creditors on a term plan insuring debtors, or disability provisions in group life policies to provide coverage.

23-87-108. Amount.

- (a) Credit Life Insurance. The amount of credit life insurance shall not exceed the original amount of the indebtedness and any interest included therein.
- (b) Credit Disability Insurance. The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness and any interest included therein divided by the number of periodic installments.

23-87-109. Term.

- (a) The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy.
- (b) The term of the insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.
- (c) If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness.
- (d) In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in § 23-87-113.

23-87-110. Provisions of policies and certificates of insurance.

- (a) All credit life insurance and credit disability insurance sold shall be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance. The individual policy or group certificate of insurance shall be delivered to the debtor.
- (b) Each individual policy or group certificate of credit life insurance and credit disability insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the identity by name or otherwise of the person or persons insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverage including any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his or her estate.
- (c)(1) An individual policy, group certificate of insurance for credit life insurance and credit disability insurance, or a related form or document delivered to the debtor shall fully disclose to the debtor that purchase of credit life insurance and credit disability insurance is voluntary and is not required as a condition for the extension of credit.
- (2) A credit life insurance and credit disability insurance policy or related form or document shall be filed with and approved by the Insurance Commissioner before it may be used in this state.

(3)(A) The commissioner's approval of a credit life insurance and credit disability policy or related form or document shall be prima facie evidence that the language of the policy is not contrary to the Arkansas Insurance Code.

(B) There shall be no private cause of action challenging the validity or propriety of a policy or related form approved by the commissioner.

(C) Any action or process challenging or questioning the validity of a credit life insurance and credit disability policy or related form approved by the commissioner shall be brought only in the State Insurance Department under applicable provisions of the Arkansas Insurance Code or under procedures established by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) The sale of credit life insurance or credit disability insurance shall not create a fiduciary relationship between the insurer and the insured.

(e) The insured's signature on an individual policy or group certificate of insurance of credit life insurance and credit disability insurance or a related document provided to the insured, evidencing the insured's election to purchase insurance in connection with a loan, shall be prima facie evidence of the insured's voluntary election to purchase the insurance.

23-87-111. Delivery of policy or certificate.

(a) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as provided in subsection (b) of this section.

(b)(1) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the amount of payment by the debtor separately in connection with credit life insurance and credit disability insurance coverage, and a brief description of the coverage provided or to be provided shall be delivered to the debtor at the time the indebtedness is incurred.

(2) The copy of the application for or notice of proposed insurance shall refer exclusively to insurance coverage and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein.

(3) Upon approval of the application, if any, or acceptance of the insurance and within thirty (30) days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor.

(4) The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as of the date the indebtedness is incurred.

(5) The insurer may rely upon the representations in the application regarding the health and employment of the applicant without further investigation or examination of the debtor.

(6) If credit life insurance or credit disability insurance is rescinded due to material misrepresentation on the part of the insured, the insured shall be entitled to a full refund of the premium paid.

23-87-112. Filing, approval, and withdrawal of policies, certificates, notices, etc.

- (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders shall be filed with the insurance commissioner in the state in which the policy is issued.
- (b) Within thirty (30) days after the filing of all policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders, in addition to other requirements of law, the commissioner may disapprove the form if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits or if it contains provisions that are unjust, unfair, inequitable, misleading, or deceptive or encourage misrepresentation of the policy.
- (c)(1) If the commissioner notifies the insurer that the form does not comply with this section, it is unlawful thereafter for the insurer to issue or use the form.
- (2) In the notice, the commissioner shall specify the reason for his or her disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer.
- (3) No policy, certificate of insurance, notice of proposed insurance and no application, binder, endorsement, or rider shall be issued or used until the expiration of thirty (30) days after it has been so filed unless the commissioner gives his or her prior written approval thereto.
- (d) The commissioner may, at any time after a hearing, of which not less than twenty (20) days' written notice was given to the insurer, withdraw his or her approval of any form on any such grounds.
- (e) It is not lawful for the insurer to issue the forms or use them after the effective date of the withdrawal of approval.
- (f) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

23-87-113. Premiums and refunds.

- (a)(1) Each insurer issuing credit life insurance or credit disability insurance shall file with the Insurance Commissioner its schedules of premium rates for use in connection with the insurance.
- (2) Any insurer may revise the schedule from time to time and shall file the revised schedules with the commissioner.
- (3) No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then on file with the commissioner.
- (4) The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by § 23-87-112.
- (5)(A) The commissioner shall have exclusive jurisdiction to approve all credit life insurance and credit disability insurance rates, policies, group certificates of insurance and related notices, applications, binders, endorsements, and riders issued in this state.
- (B) Rates regarding credit life insurance or credit disability insurance that have been promulgated or approved by the commissioner are deemed to be valid unless changed

under the Arkansas Insurance Code or the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(C)(1) There shall be no private cause of action for challenging credit life insurance or credit disability insurance rates that have been promulgated or approved by the commissioner.

(2) Any action or process challenging or questioning the validity of credit life insurance and credit disability rates approved by the commissioner shall be brought only in the State Insurance Department under applicable provisions of the Arkansas Insurance Code or under procedures established by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b)(1) Each individual policy, group certificate, or notice of proposed issuance of credit life insurance and credit disability insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of premium due shall be paid or credited promptly to the person entitled thereto. However, the commissioner shall prescribe a minimum refund, and no refund that would be less than the minimum need be made.

(2)(A) The formula to be used in computing refunds shall be filed with the commissioner.

(B) The Rule of 78s is a permissible method of computing refunds for reducing term credit life insurance or reducing credit disability insurance on which the insurance charges to the debtor are paid in a single sum.

(C) The formula used for computing refunds shall be disclosed in the policy or group certificate of insurance.

(3)(A) The commissioner shall have the exclusive jurisdiction to promulgate or approve methods of computing refunds of unearned premiums.

(B) Any formula or method used or approved by the commissioner for determining the return of unearned premium under this section shall be deemed to be fair and reasonable.

(C)(i) There shall be no private cause of action to challenge any method of refunding unearned premium that has been promulgated or approved by the commissioner under this section.

(ii) Any action or process challenging or questioning the method of refunding an unearned credit life insurance and credit disability premium that has been approved by the commissioner shall be brought only in the department under applicable provisions of the Arkansas Insurance Code or under procedures established by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

23-87-114. Issuance of policies.

All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein and shall be issued only through holders of licenses issued by the Insurance Commissioner.

23-87-115. Claims.

- (a) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.
- (b) All claims shall be paid by check or draft of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.
- (c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

23-87-116. Debtor's choice of insurer as additional security.

When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

23-87-117. Compensation limited.

- (a)(1) In order to assure that the premium rates charged or to be charged for credit life or credit disability insurance are reasonable in relation to benefits provided, the Insurance Commissioner, after due notice and hearing, may issue rules and regulations establishing the maximum compensation payable to an agent, a broker, or a creditor or any affiliate, associate, subsidiary, director, officer, employee, or other representative of or for the creditor for writing or handling the insurance, including commission, dividends, premium adjustments, policy writing fees, underwriting gain, or any compensation or remuneration in whatever form.
- (2) An insurer may disclose the amount of commission or compensation payable to an agent, broker, or creditor under this section.
- (b) Provided, the term "compensation" as defined and used herein shall not be deemed to include reinsurance premiums paid to, or underwriting profits generated by, an insurer or reinsurer owned by, controlled by, or under common control with a credit insurer, an agent, broker, creditor, group of creditors, or any affiliate, associate, subsidiary, director, officer, employee, or other representative of, or for such credit insurer, creditor, or group of creditors, on accounts in existence with such an insurer or reinsurer on January 17, 1989, that have been registered with the commissioner within twenty (20) days of July 3, 1989, in accordance with pertinent rules and regulations promulgated by the commissioner.

(c) Provided further, any and all payments to all direct and indirect successors in interests whether through purchase, gift, devise, or otherwise, related to all accounts registered under this section shall also not be deemed compensation.

23-87-118. Enforcement.

(a) The Insurance Commissioner may, after notice and hearing, issue such rules and regulations as he deems appropriate for the supervision of this chapter.

(b)(1) Whenever the commissioner finds that there has been a violation of this chapter or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date.

(2) The order shall be binding on the insurer and other person licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

23-87-119. Judicial review.

Any party to the proceeding affected by an order of the Insurance Commissioner shall be entitled to judicial review by following the procedure set forth in § 23-61-307.